

# TESTIMONY of THOMAS MARTURANO

New Jersey Meadowlands Commission  
Director of Natural Resources and Solid Waste



*Presented to the:*  
House Subcommittee on Railroads, Pipelines, and Hazardous Materials



# TESTIMONY OF THOMAS MARTURANO

New Jersey Meadowlands Commission  
Director of Natural Resources and Solid Waste



built so that at least the waste was being dumped within a building. Unfortunately, because the railroad still insisted that it was answerable to no one in the state, the structures were built without acknowledgement of the International Building Code. They did this even though they knew that there had been several fires in the open dumps. If there had been a major fire in one of the buildings, any of the firemen would know that the building code requires all buildings of that size to have sprinkler systems which protect the structure allowing first responders the time necessary to ensure that no one remained inside. No such protection existed, and there were no defined fire exits for the workers inside. This disaster-in-waiting could be avoided with a regulated facility.

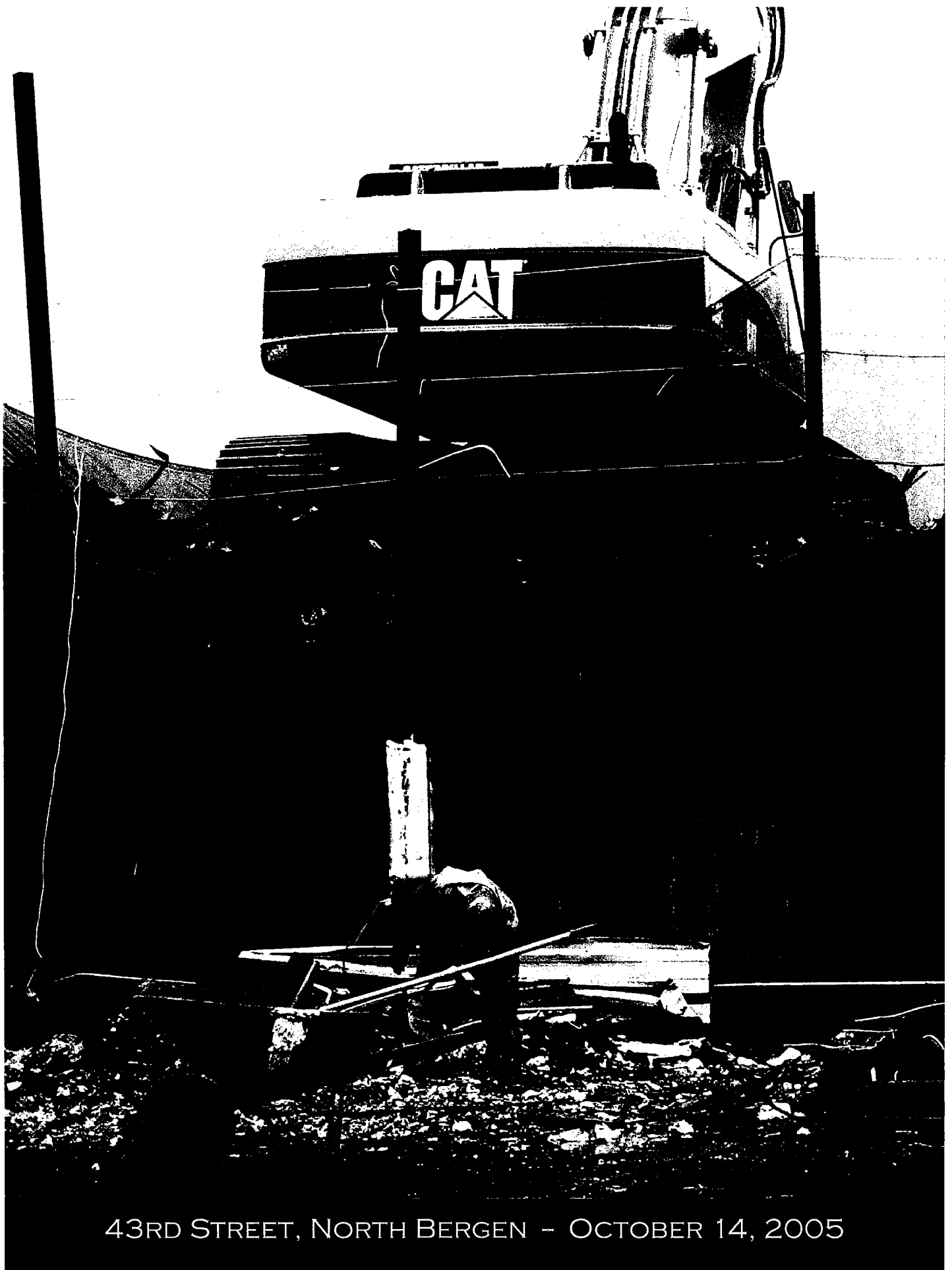
I realize that in the greater scheme of things before Congress, the handling of solid waste is relatively insignificant, and that is exactly the point. The proper regulation of solid waste cannot be done from afar. It is a daily, on-the-ground endeavor. For the welfare of the people immediately surrounding the facility and our environment, it has to be done.

Solid waste is not like coal, lumber, stone or sand. When these items show up at a rail transload facility, everyone knows exactly what is about to be off-loaded or dumped from the delivery trucks. The inspector of such a facility would see the same commodity being unloaded and loaded with numbing consistency. At a solid waste transload facility, not only is each day's material different,

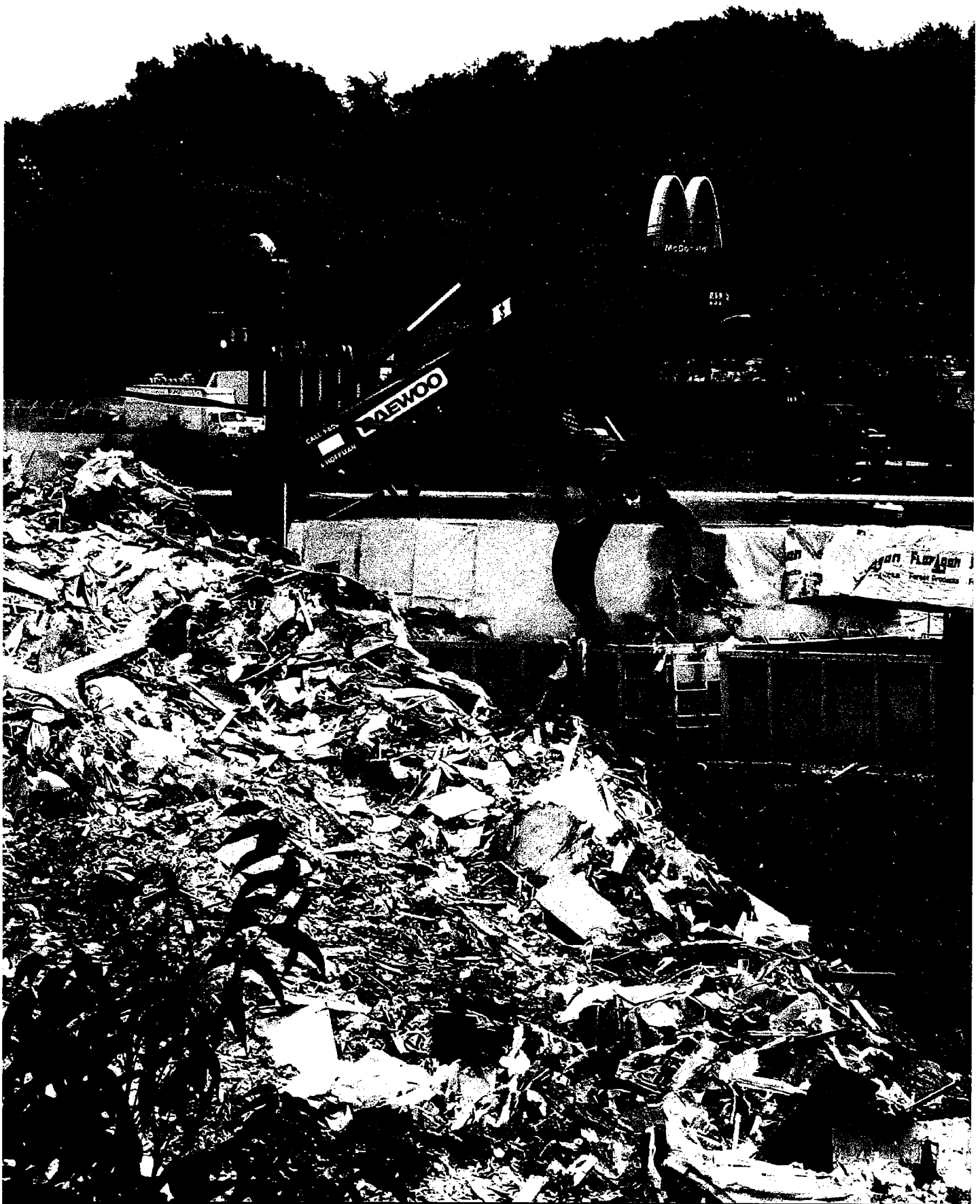
but each load is different as well. Also, unlike the others, no one, not the hauler, facility operator nor the railroad knows what is about to be dumped on the tipping floor. In a regulated facility, provisions are made for loads which are smoldering or contain hazardous wastes. Likewise, an operations manual is prepared so that all employees know what to do and who to call in the event of a catastrophic load. I could go on and on about what I have witnessed being dumped from a garbage truck. Instead, suffice it to say that the reason I still do this after all these years is the beauty and challenge that comes from solid wastes' infinite variability. It is a game of cat and mouse that can be played out at any time a generator or hauler tries to knowingly or unknowingly, slip something by the regulators, and it is our job to prevent it.

We are not opposed to the movement of solid waste by train. In fact, the NJMC has entertained proposals to move waste by barge, truck and rail. Furthermore, the NJMC was one of the first planning agencies to specifically create an intermodal zone as part of our Master Plan. We just want the facilities to be properly permitted and regulated on an on-going basis so as to not negatively impact the environment or adjacent properties. As I think you are beginning to realize, this really has nothing to do with the rights of railroads. Those rights are not being questioned. Rather this is about the long history of how solid waste is handled in our country and whether we can afford to allow a new way of doing business in which nobody is watching.

**APPENDIX ONE:**  
**Survey of Under-regulated  
Solid Waste Processing Operations**



43RD STREET, NORTH BERGEN - OCTOBER 14, 2005



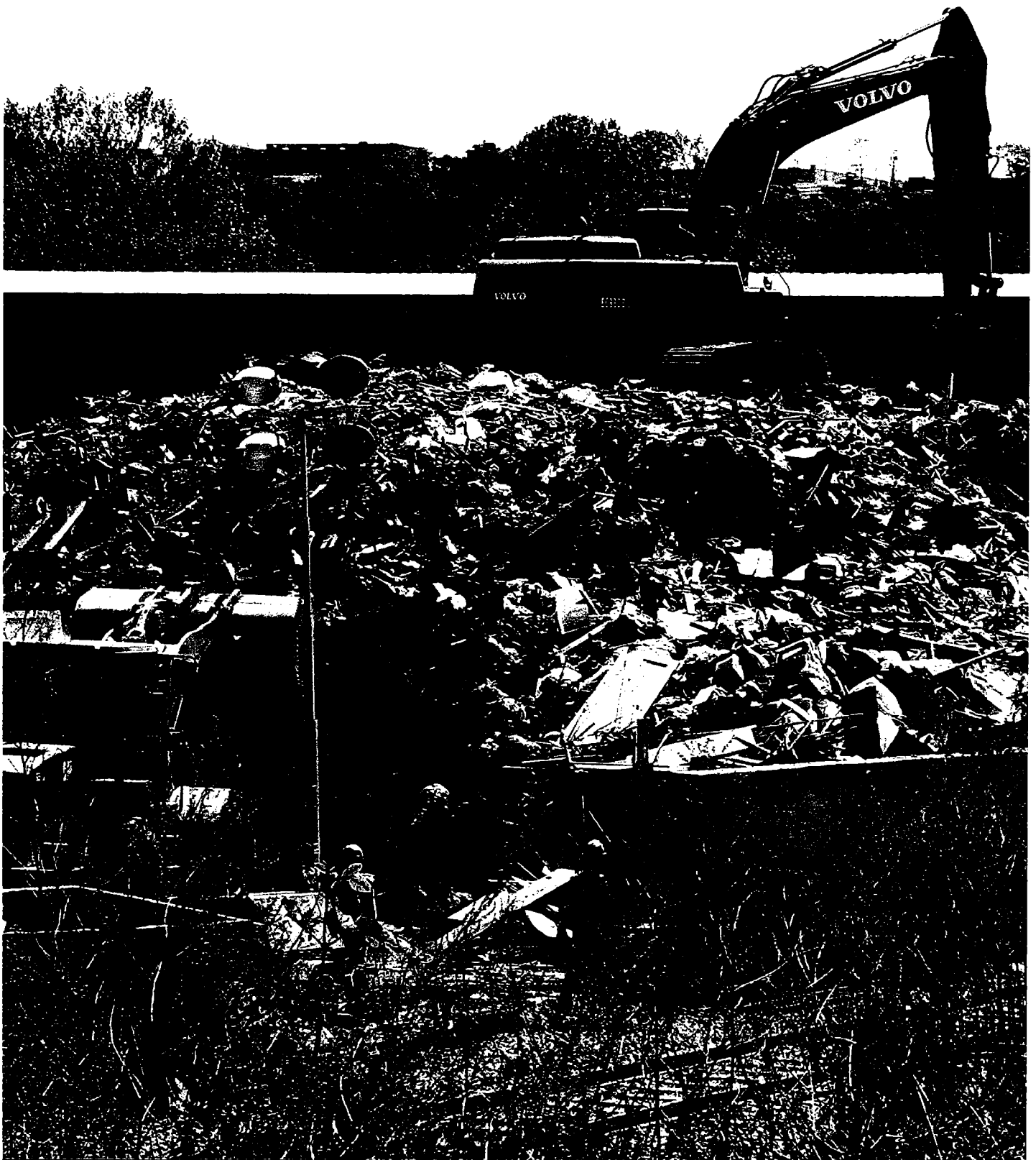
16TH STREET, NORTH BERGEN - JUNE 21, 2005



2200 SECAUCUS ROAD, NORTH BERGEN - JUNE 15, 2005

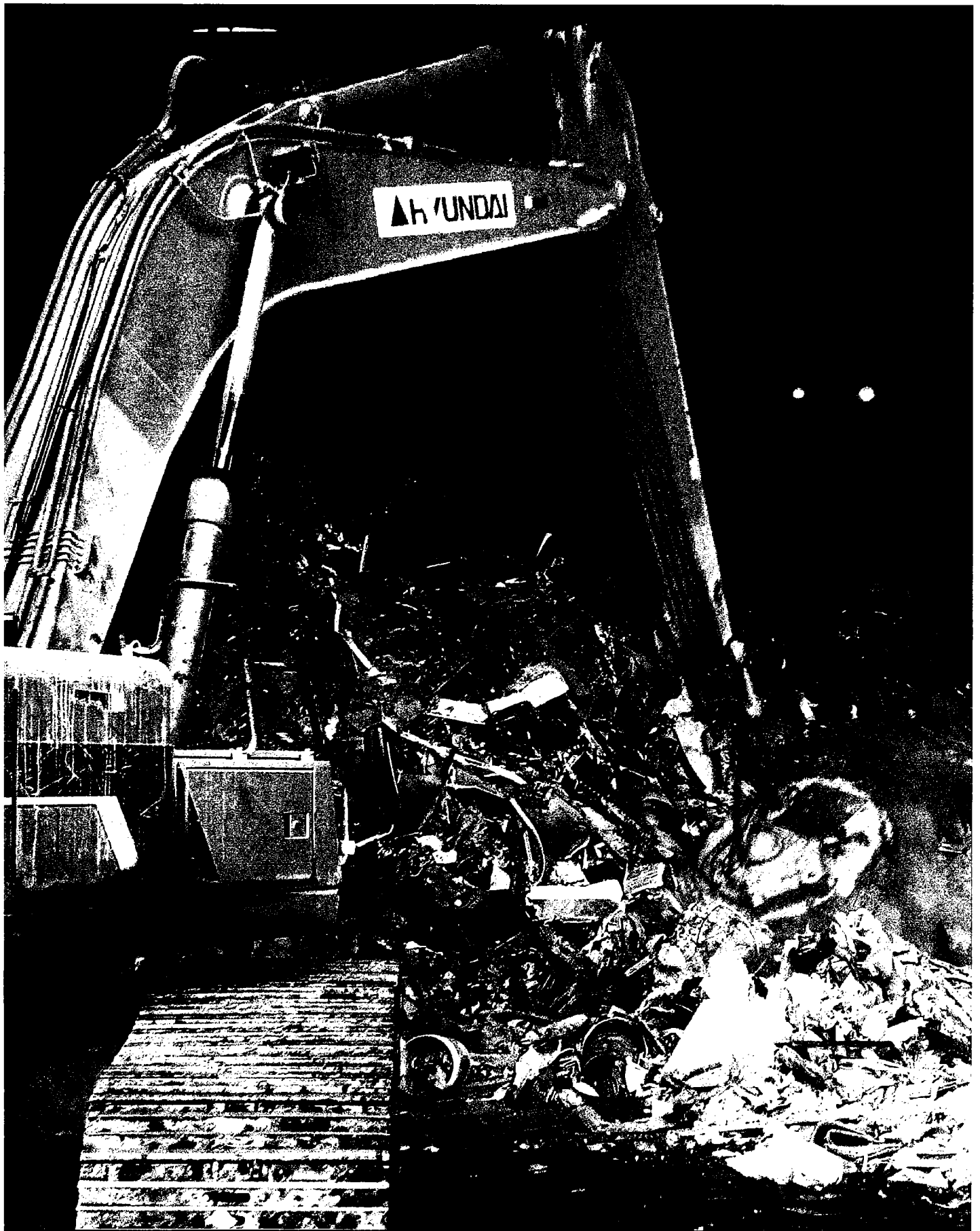


2200 SECAUCUS ROAD, NORTH BERGEN - OCTOBER 14, 2005



94TH STREET, NORTH BERGEN - NOVEMBER 11, 2005





94TH STREET, NORTH BERGEN – JANUARY 23, 2007

RANS  
HLY

OKING



83RD STREET, NORTH BERGEN - OCTOBER 2, 2007

hazards to the neighboring areas and should be subjected to some sort of state regulations.

In the past, both the local Superior Court and state Supreme Court have said that the standing federal railroad protection laws prevail. Those rulings have not only allowed the waste stations to continue to do business in North Bergen, but they led to additional stations being built and operated.

But now, the state DCA has stepped in with their newest findings and shut down the three existing stations in North Bergen citing fire safety standards.

"It's not safe for the occupants of the building," said Bill Connolly, the state director of the Division of Codes and Standards, a subdivision of the state DCA. "It's not safe for the firefighters who might be called to fight a fire at the building, and it's not safe for the community."

Thomas O'Neil, a spokesman for the NYS&W, maintains that shutting down the waste transfer stations will only cause further problems to the area. Without the use of the railway, the collected construction debris is now being removed via trucks.

While the trucks were removing the debris last week, there was significant dust that was visible to the naked eye.

"Construction debris isn't going to magically go away," O'Neil said. "What this means for the region is just that instead of moving waste by train in the most environmentally friendly way, it will just be trucks traversing the highways in the area."

### ***Will appeal new shutdown***

Two years ago, then acting Gov. Richard Codey tried to fine the NYS&W a record \$2.5 million for the numerous health and environmental infractions. He ordered the railroad to comply with regulations stipulated by the state Department of Environmental Protection.

In turn, the NYS&W sued the state DEP, saying that the proposed fine levied by the state would put the railroad out of business and again used the 120-year-old federal railroad law as leverage in the suit.

Last February, a federal judge ruled in favor of the NYS&W, dismissing the \$2.5 million fine and ruling that the federal law takes precedence over the state environmental regulations.

Regarding the most recent shutdown, O'Neil said that the NYS&W has already filed an appeal in federal court, asking for an injunction on the closings.

### ***Not just a local issue***

North Bergen Mayor Nicholas Sacco, who is also the state senator in the 32nd District, applauded the efforts of the state DCA.

"I think that it's great that the state Department of Community Affairs took the jurisdiction in this matter," Sacco said. "It's very important for North Bergen. We couldn't accomplish anything alone, but I think we were able to shed some light on the problem. When the state realized

that it was a problem statewide, not just in North Bergen, the state DCA got involved. I'm grateful that they took the lead."

Sacco said that the township of North Bergen couldn't fight the battle against the waste transfer stations alone.

"It would have become a financial burden for us in terms of a legal battle," Sacco said. "I know that the state DCA has now shed some light on this problem nationally and it's a very legit problem. Maybe Congress will now address it, knowing that the law that protects this operation belongs in the 19th Century and is not appropriate now."

Sacco was asked if there could be a happy medium reached between the railroads and the government.

"There could be, if these operations are controlled properly," Sacco said. "But they would have to be entirely enclosed and show no danger whatsoever to the residents."

## **N.J. asks feds for stricter regulation of trackside sites**

*April 20, 2007 - The Record - By HERB JACKSON*

New Jersey officials urged the federal Surface Transportation Board on Thursday to make trash facilities owned by railroads meet the same environmental, health and safety rules as other trash facilities.

But a lawyer for the railroad that owns several sites in North Bergen that were fined \$2.5 million for violations in 2005 contended that New Jersey is out to get his client and urged the federal regulators not to cede control over the issue.

"The state of New Jersey had an agenda ... and their agenda was to shut these facilities down," said G. Paul Motes, lawyer for the New York, Susquehanna & Western Railway Corp.

NYS&W owns five North Bergen facilities where construction waste and contaminated soil from polluted sites are transferred from trucks onto railcars for shipment to out-of-state landfills.

The company convinced a U.S. District Court judge in February that federal laws designed to protect interstate commerce from not-in-my-back-yard local laws make railroads exempt from state solid waste regulations, and the fine was overturned.

The state has appealed, arguing the federal exemption applies to transportation activities, not trash processing.

"No one to my mind has ever said why a railroad can't comply with basic health and safety rules," said David K. Monroe, a Washington lawyer who is serving as special railroad counsel to New Jersey. "Is there a transportation reason they don't have to do that?"

The issue is playing out in other places around the country and within New Jersey, where environmentalists have also complained about trash facilities on railroad property in Saddle Brook and Paterson.

Sen. Frank Lautenberg, D-N.J., heads the Senate subcommittee that

rights granted to railroads don't extend to the waste-transfer business.

Sen. Frank Lautenberg introduced a bill two years ago to affirm states' rights to regulate the environmental and health impacts of solid-waste transfer operations by railroads. His office says he plans to reintroduce that measure soon. But they say the quicker way would be to win an order to the same effect by the federal Surface Transportation Board. The senator is lobbying the board. Good. The senator should continue to make this a priority.

NYS&W says state regulation is unnecessary. It points to improvements it has made since this controversy broke in 2005. The railway has for example built structures around the trash heaps that may reduce the risks of air pollution from flying debris.

But the railway made improvements under state pressure. Now that the court has ruled the state is powerless, what incentive does NYS&W have to invest in such protections?

Railways balk at the notion of states overseeing trash-transfer operations. They worry about the loss of their federal protections. No one is trying to undo the interstate commerce rights of rail.

New Jersey doesn't want to regulate railroads. It wants to regulate trash. If courts won't recognize this fundamental right of states, another branch of the federal government must step in.

## **Official: transfer stations 'unsafe'**

*December 14, 2005 - The Record - By PETER J. SAMPSON*

NEWARK - A state official testified Tuesday that the enclosed waste-transfer stations the New York Susquehanna & Western Railway Corp. is building in North Bergen failed to comply with basic building code and environmental safeguards.

The so-called "transload" facilities, which have not received zoning and planning approvals, lack sprinkler systems, restrooms and such basic emergency equipment as eye washes in the event a worker is exposed to dust, said Thomas R. Marturano, director of solid waste and natural resources for the New Jersey Meadowlands Commission.

"It's unconscionable to be inside these buildings in such unsafe conditions," Marturano testified during the second day of a hearing before U.S. District Judge Katherine S. Hayden.

The judge continued the hearing until March but directed the railroad to work with the state to address concerns about the transfer facilities, where tons of construction and demolition debris and contaminated soils are delivered by truck to be loaded onto rail cars for out-of-state disposal.

Hit with a \$2.5 million fine for violating 2004 regulations governing the design, construction and operation of rail transload facilities, NYS&W sued the state Department of Environmental Protection and the Meadowlands Commission in August, contending the DEP regulations are preempted by federal law.

The judge temporarily blocked the state from enforcing the regulations

and collecting the fines. She allowed the railroad and its loading contractors to continue operating the transfer sites as NYS&W moved to replace four "open air" dumps with enclosed facilities that are supposed to control dust, pests, odors and wastewater runoff.

But Marturano said the new facilities are fraught with problems.

In addition to failing to comply with building and safety codes, he said, the scales to weigh trucks were not located properly and could lead to dangerous backups along a street that crosses the tracks.

"Traffic is a huge issue," he said, noting there's been no assessment of the effects of hundreds of daily truck trips on local roads.

Marturano said the sites were being operated by solid waste haulers who didn't want to spend the time or money to create legitimate transfer stations.

He also asserted that the railroad's recently instituted "flow control" measures, intended to prevent dangerous mountains of construction and demolition debris from accumulating at transfer sites, have led to illegal dumping in the district.

Truckers who find the gates closed early often dump their loads in deserted parts of the Meadowlands, he said.

Hayden has been pushing the parties to settle. She noted that any decision she made would likely be appealed by the losing party, take years to resolve and not serve the people of New Jersey now.

Finding that the railroad, which operates 400 miles of track in New Jersey, New York and Pennsylvania, has made progress in improving its facilities, she directed it to continue the dialogue with the state and identify which state regulations it intends to obey and which it won't.

She said she also would entertain a request by the state to have the rail line post a bond to cover its potential fines and asked both sides to suggest a fair amount. The judge also said she wants to see a traffic study done.

Paul Moates, a NYS&W attorney, said the rail line expects to finish the facilities and be in substantial compliance by the time the parties return to court in March.

## **Derailing a disaster**

*July 18, 2005 - The Record - Editorial*

CONSIDER it the last straw. In recent years, North Jersey communities have had to put up with all sorts of headaches from railroads - from foul fumes of long-idling freight trains to the mounds of trash at rail yards. But in recent weeks, the situation escalated from exasperating to untenable.

Police and health officials found more than 280 tons of a potentially deadly chemical at a rail facility owned by the New York Susquehanna & Western Railway in North Bergen. By the time state police, fire marshals and environmental officials inspected the rail yard last week, most of the material - a flammable chemical known as phosphorus

authorities on railroad property.

Jeff Tittel, executive director of the New Jersey chapter of the Sierra Club, said such legislation is badly needed to protect the public.

"It's mind-boggling that such dangerous chemicals can be stored on a railroad siding near a residential area," Tittel said. If there had been an accident, he said, it could have been catastrophic. "You've got to wonder if we're just flirting with disaster."

## HUDSON HAS CHEM INSECURITY ISSUES

July 13, 2005 - *The Jersey Journal* - By JARRETT RENSHAW

**NORTH BERGEN** - Describing it as a potential "environmental catastrophe," local and county authorities are investigating security measures at a township rail yard, which acts as a storage yard for as much as 28,000 pounds of explosive chemicals.

The inquiry - and the outrage - stems from when emergency personnel apparently stumbled upon the chemical last week while responding to a complaint of a foul smell at the CSX Railroad property on West Side Avenue.

The good news was the smell proved to be inconsequential.

The bad news was officials discovered little or no security at the yard, a storage center along the New York, Susquehanna & Western Railway.

More than 40 containers of phosphorus pentasulfide, a flammable, explosive chemical, are stored at the site, according to police reports.

"We observed no security personnel, restriction or point of contact," read a memo from the North Bergen Health Department. A police officer wrote in his report, "There was absolutely no security in the yard."

Yesterday, a photographer from *The Jersey Journal* was able to walk through the yard's open gate and freely inspect the aluminum containers. Eventually, two employees asked him what he was doing, but then returned to work.

John Demjanick, a hazardous materials responder and coordinator with the Hudson Regional Health Commission, visited the site and said he is concerned about the length of time the chemicals remain on the property.

"The chemicals are supposed to be moved from the rail car right on to a truck," Demjanick said yesterday. "If that happens, then everything is OK. But if it stays there, then there becomes a problem."

A CSX Railroad spokesman said the site is patrolled daily by New York, Susquehanna & Western Railway Police, though usually at night, after workers on the site go home.

## The rules for railroads

June 03, 2005 - *The Star-Ledger* - Editorial

Congress long ago decided that the federal government alone should

regulate railroads, and with good reason. Uniform national standards ensure that local officials cannot helter-skelter zone train lines out of existence, derailing the free flow of commerce along the way.

That grand goal is little consolation to those who happen to live in tiny Elwood, a hamlet in Mullica Township in Atlantic County, home to an old, little-used train line. The Southern Railroad of New Jersey wants to build a transfer station there on a former junkyard site.

Trucks would bring tons of construction debris, and perhaps other waste, to the station, and trains would carry it off to Ohio landfills. The railroad says federal rail jurisdiction means state permits, local ordinances and the like don't apply.

But they do, at least enough to ensure that the health and safety of local residents aren't compromised. Federal pre-emption of local rules doesn't give railroads a complete pass on construction codes or other local rules that directly affect public safety and health.

Just which local mandates fit within those categories is a matter of growing debate. Railroads and local authorities usually disagree. And Elwood is just the latest example of a clash that is popping up across the country. Here in New Jersey, there are at least four railroad-operated transfer stations in the Meadowlands and plans for more.

All that has prompted acting Gov. Richard Codey, local officials and Sens. Frank Lautenberg and Jon Corzine to talk of changing the federal law. As appealing as the idea might seem, it's hard to see why that wouldn't create the very problem that Congress tried to prevent: the shutdown of railroads on local or political whim. And Congress isn't going to change the law anyway.

That doesn't mean the residents of Elwood or anyplace else have to suffer without recourse. The state should use its health and safety powers as aggressively as possible to keep the railroad facilities operating as good corporate citizens, not rogue train barons. That includes asking the Surface Transportation Board, the federal agency responsible for rail regulation, to officially spank railroads that balk at reasonable controls.

The board is no pushover. It slaps down towns and states that use sham environmental or other claims as a pretext to get around Washington's limits on local authority. But the board also says railroads should be cooperative and communities should be pragmatic.

That means railroads should abide by reasonable environmental and other regulations, including rules limiting the number of trucks and their operating hours. Residents such as those in Elwood can't be inundated with convoys of noisy trucks hauling construction debris to the tracks at 5 a.m.

Federal jurisdiction may not give the state Department of Environmental Protection or local officials nearly as much power over railroads as they would like. But it still leaves them enough to guard the legitimate interests of New Jersey residents.

They should not be afraid to do so. National commerce is important. But so is local quality of life.

## Description of Outstanding Cases

**W**hat follows is an outline of some of the pending cases that illustrate problems inherent in the contention that the laws governing solid waste should be breached to create a new and unprecedented exception for facilities associated with railways. It is by no means an exhaustive survey, but rather a reference to pertinent examples.

There are several instances of rail-side solid waste transfer stations in New Jersey that have eschewed local oversight with adverse consequences to the public and the environment. The situation has improved at some facilities, but only after legal action was taken. In cases in New Jersey and elsewhere, judges have recognized the traditional oversight held by local and state agencies over solid waste transfer operations.

### **Township of North Bergen**

- Five solid waste processing facilities situated along the New York Susquehanna & Western Railroad (NYS&W) emerged in the past five years in the form of large piles of debris placed directly on the ground and stored in place for considerable periods of time and without any significant environmental controls of any kind.
- Piles of construction and demolition debris as high as two stories had accumulated in the open-air facilities. Certain operations were closed and others put in place enclosed structures in which to store the debris. Enclosed structures that were eventually put in their place through the force of litigation were found packed beyond capacity with debris and constructed without regard for the International Building Code and without necessary fire suppression systems. Nearby wetlands were also found to have been filled illegally. The operations created serious fire safety and air and water quality hazards.
- The solid-waste processing facilities argued that because of their proximity to or location on NYS&W

property they were preempted from any local or state guidelines governing solid waste operations.

- The railroad has continued to litigate in support of that position. In the meantime conditions have improved without assurance of continued improvement to the necessary standards or appropriate observance of established standards.

### ***Litigation:***

- The New Jersey Department of Environmental Protection (NJDEP) fined NYS&W \$2.5 million as a result of numerous and continuous violations of state environmental regulations at five open-air waste facilities which went unmitigated for more than six months. The railroad requested injunctive relief from the fines based on broad claims of preemption.
- A U.S. District Court permanently enjoined the NJDEP from enforcing its regulations and assessing any civil penalty as to the five facilities at issue.
- A U.S. Third Circuit Court of Appeals decision released on September 4th struck down that ruling.
- The ruling stated that the U.S. District Court decision was overly broad and that only those state regulations that discriminate against and unreasonably interfere with rail carriage are invalid.
- The case has been remanded to the U.S. District Court.

### **City of Passaic**

- A rail-side waste processing facility has sought federal exemption from local and state oversight. Fires have broken out four times in the past four years. It is located in an urban, predominantly Hispanic and Polish residential neighborhood.
- Waste is processed in a structure located across the street from restaurants and dwelling units.
- Once waste is loaded, it is then transferred across a busy intersection while a single individual controls traffic.
- The rail cars are then assembled adjacent to a riverside playground and schoolyard.

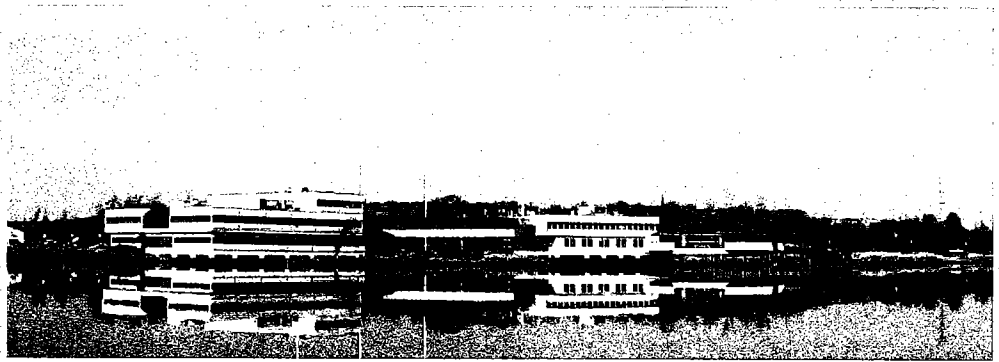
## APPENDIX FOUR:

### Description of the New Jersey Meadowlands Commission

**T**he New Jersey Meadowlands Commission (NJMC) is the state zoning and planning authority for the 30.4 square-mile Meadowland District, a region of marshes, industrial areas and residential zones five miles from Manhattan. In creating the agency in 1968, the New Jersey Legislature assigned the NJMC – in addition to its land use role – jurisdiction over the District's solid waste management plan and the responsibility of providing solid waste disposal sites. The agency provides an increasingly broad array of services to the 14 District municipalities as well as carrying out an aggressive environmental agenda. Currently the NJMC is implementing several broad and innovative initiatives which are summarized below.

#### Environmental Policy

The Meadowlands Master Plan and its requisite regulations, approved in January 2004, call for the preservation of the entire 8,400-acre Meadowlands urban wetlands ecosystem. This is one of the largest urban wetland systems in the United States. Environmental projects underway include \$10 million for a series of massive marsh restorations and the establishment of a network of passive recreation assets. Restoration of the 600-acre Richard P. Kane Natural Area and the creation of an adjoining public marina and park will receive \$3 million. An additional \$800,000 is targeted toward general trail system development in the District. Finally, a \$340,000 fund is set aside for basic environmental research. The Meadowlands District hosts a remarkable bird population of 260 different species including 35 listed as endangered and threatened in New Jersey.



#### Renewable Energy

The NJMC announced in June the advancement of a 700-kilowatt solar array that will satisfy half of the energy requirements of the NJMC campus. Next, the NJMC will work to facilitate the installation of solar energy on municipal and school-owned properties in the Meadowlands District. This year the NJMC will release its Renewable Energy Master Plan. The plan will facilitate the installation of at least 20 megawatts of renewable energy by 2020.

#### Flood Management

As part of its new drive to assist municipalities and businesses in the District, the NJMC pursues flood control strategies following the Hackensack Meadowlands Floodplain Management Plan of 2005. The plan brings agency resources to the aid of localities suffering from chronic flooding and was developed together with state and federal agencies, municipalities and property owners.

#### Municipal Support

Since 2003 the NJMC has established a highly developed system of support services for Meadowlands municipalities. This includes annual direct assistance to help communities purchase much-needed equipment that would otherwise require a hike in taxes. The NJMC's award-winning Meadowlands Environment Center is quickly expanding its educational offerings to Meadowlands school districts. Another example of the agency's unique expertise is the expansive Geographic Information System (GIS) outreach program which has produced digital mapping systems for each of the 14 municipalities in the District.